

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE HOME INSURANCE COMPANY IN LIQUIDATION
DISPUTED CLAIMS DOCKET**

In Re Liquidator Number: 2008-HICIL-35
Proof of Claim Number: EMTL 705271-01
Claimant Name: VIAD
Claimant Number:
Policy or Contract Number: HEC 9557416
HEC 9304783
HEC 4344748
Insured or Reinsured Name: VIAD (predecessor The Greyhound
Corporation / Transportation Leasing
Company)
Date of Loss:

ORDER REGARDING CHOICE OF LAW ISSUE

Procedural Background:

On June 11, 2003 VIAD Corporation ("VIAD") filed a proof of claim in the amount of \$28,570,814.00 in conjunction with its exposure to environmental remediation costs relating to forty-one (41) separate locations in twenty (20) states. On January 25, 2008, the Liquidator disallowed that portion of VIAD's claim which seeks coverage for remediation costs associated with a bus maintenance facility in San Diego California. VIAD then initiated this disputed claim proceeding.

The Liquidator bases his disallowance upon his determination that under the terms of the policies at issue VIAD failed to provide The Home Insurance Company ("Home") with timely notice of the potential liability relating to the San Diego site. During the telephonic structuring conference with the Referee on October 21, 2008, the parties raised a choice of law issue as a preliminary matter.

At the Referee's direction the parties submitted memoranda outlining their respective positions on which jurisdiction's law should be applied to resolve the pending dispute. Subsequent to the telephonic conference, and as reflected in the recently filed pleadings, the parties apparently agree that no matter what the ruling on choice of law may be, such will set the legal parameters of this dispute, but will not dispose of the dispute in its entirety.

Discussion and Positions of the Parties:

Home issued three excess general liability policies to the Greyhound Corporation ("Greyhound") covering policy periods between 8/31/66 and 6/19/72. When the first two policies were issued, the principal place of business of Home was in New York, as were the headquarters of Greyhound. When the third policy was issued, Greyhound had moved

its headquarters to Phoenix, Arizona. VIAD is the successor in interest to Greyhound under these policies.

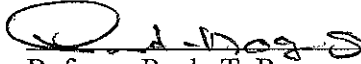
VIAD takes the position that the site of the damage controls construction of the policies at issue, arguing that for this particular dispute California law governs because this claim involves environmental contamination occurring in that state. The Liquidator argues that under New Hampshire law the Referee must apply New York law in construing the two earlier policies, and New York or Arizona law in the latest of the three.

In giving consideration to the parties' positions on this issue, the Referee considers the character and expansiveness of the risk that Home insured. Under the two earlier policies, excess of underlying insurances and subject to a number of exclusionary endorsements, Home agreed to broadly insure the "business operations" of "The Greyhound Corporation and its Subsidiary Companies more than 50% owned". In the initial contract, potential territorial limitations were stricken and only Cuba, by way of endorsement, was excluded. As for the second of the two earlier contracts, a litany of countries was excluded, largely those considered politically aligned with the then Soviet Union. The third contract restricted coverage to occurrences in the U.S., its territories and Canada. While negotiating coverage for both national and international operations with few locations excluded, as was the case in the first two policies and for locations in the U.S (including territories) and Canada in the last contract, the parties were silent as to which jurisdiction's law should apply in the event of coverage disputes.

New Hampshire's choice of law principles require that consideration be given to which state has "the most significant relationship" to the insured risk. Consolidated Mut. Ins. Co. v. Radio Food Corp., 240 A.2d 47,49, 108 N.H. 494, 496 (N.H. 1968). The Referee has given due consideration to the Liquidator's argument that under the circumstances presented here the place of contracting should be recognized as the state with the most significant relationship, particularly when there is the potential for dispute over more than 41 separate environmental claims emanating from a significant number of different jurisdictions. The Referee is, however, unable to agree. The Referee must assume that the contracting parties were well aware of the expansiveness of the risks to be insured and the wide geographical exposures inherent to the contracts they negotiated. They were, nonetheless, silent as to applicable choice of law. Under these circumstances, and in the absence of an explicit choice by the parties, the state with the most significant relationship to the contract is the state where the risk is located. Ellis v. Royal Ins. Co., 530 A.2d 303, 129 N.H. 326 (N.H. 1987).

Consistent with the foregoing and agreeing with the Claimant, the Referee finds that the substantive law of the State of California applies to this dispute.

December 4, 2008
Date:


Referee, Paula T. Rogers